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QUESTIONS CONCERNING THE GDR
 (For use at the ENDC)

The possible signature of the GDR to the NPT presents questions that may be raised in the course of the ENDC.

Questions and suggested responses follow:

1. If the GDR becomes a party to the treaty does that imply recognition of it by the US?

NO. In international law recognition of an entity as a state or a regime as a government is a matter of intent. The act of subscribing to a multilateral agreement also signed by an unrecognized entity, does not amount to recognition. We have made statements to this effect in connection with the Limited Test Ban Treaty and the treaty on Outer Space. A formal statement of the Department of August 2, 1963, with reference to proposed GDR signature of the Test Ban Treaty stated:

"We understand the Federal Republic's concern that this treaty should work no recognition or change in status for East Germany . . .

"Under Secretary Harriman and his advisers had this problem very much in mind during the negotiation of the treaty.

"... I It is a well-established proposition of international law that recognition is not accorded to an unrecognized regime when that regime acts to become a party to a multilateral treaty, along with states that do not recognize it. Similarly, such action by an unrecognized regime does not result in any recognition or acknowledgment of the existence of the state which the regime purports to

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- 2 -

Secretary Rusk, in his testimony before the Senate stated:

"It has been suggested that, by the act of subscribing to the treaty, a regime might gain recognition by parties to the treaty that do not now recognize it. No such effect can occur. In international law the governing criterion of recognition is intent. We do not recognize, and we do not intend to recognize, the Soviet occupation zone of East Germany as a state or as an entity possessing national sovereignty, or to recognize the local authorities as a government. These authorities cannot alter these facts by the act of subscribing to the test ban treaty."

In a statement of December 17, 1966 to the General Assembly, Ambassador Goldberg commenting on the accession clause of the Space Treaty stated:

"The adoption of the accession clause now included in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space -- urged because of exceptional circumstances favoring a very broad geographical coverage for the Space Treaty -- does not, of course, bring about the recognition or otherwise alter the status of an unrecognized regime or entity which may seek to file an instrument of accession to the Space Treaty. Under international law and practice, recognition of a Government or acknowledgment of the existence of a state is brought about as the result of a deliberate decision and course of conduct on the part of a government intending to accord recognition. Recognition of a regime or acknowledgement of an entity cannot be inferred from signature, ratification or accession to a multilateral agreement. The United States believes that this viewpoint is generally accepted and shared, and it is on this basis that we join in supporting the present final clauses of the Space Treaty."

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like the Limited Test Ban Treaty and The Outer Space Treaty
The NPT, will similarly contain a clause opening the treaty to signature by "all states." Since this is an arms control agreement of universal importance and concern, it has been decided to attempt to obtain the widest possible acceptance of the treaty.

Any question concerning GDR accession can be answered by reference to the above statements. It can also be noted that the US is party to a number of agreements to which the GDR has also affixed its signature. This has never been interpreted as recognition of or an act towards recognition of the GDR.

2. Will the US permit the GDR to sign or deposit its instrument of ratification in Washington?

NO. This treaty provides for multiple depositaries. As in the test ban treaty no depositary need accept a signature from authorities in a territory it does not recognize as a state. Therefore, the U.S. will not accept the signature of the GDR which it does not recognize. The U.S. will similarly refuse to accept the deposit of an instrument of

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- 4 -

ratification from the GDR. If the test ban practice is followed the U.K. will act in the same manner. It is assumed, therefore, that the GDR will deposit its instrument of ratification in Moscow. The US will also refuse to accept notice of signature, ratification or accession by the GDR from the Soviet Union. This also follows the practice of the two earlier arms control treaties that have been mentioned.

3. If a state deposits its instrument of ratification or accession with the US subject to a reservation or other statement, does the obligation of a depositary to "inform all signatory and acceding states of . . . other notices" require the US to inform the GDR?

NO. As the US would not have accepted the signature or ratification or the notice of signature or ratification of the GDR it would have no obligation to inform the GDR of any statement.

4. If the GDR attempts to attend the conferences that are provided for in Article IV would the US object? Further, would such attendance constitute recognition of the GDR?

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- 5 -

With regard to the first part, the answer is yes/ follows. The
US has told the FRG that

"With respect to conference problems, the language of Article IV, paras. 1 and 2 providing for possibility of a conference on amendments is derived from the limited test ban treaty. Secretary Rusk testified in 1963 that 'we preserve our right to object' should the GDR subsequently seek to assert privileges under the test ban treaty such as endeavoring to attend an amendments conference. We advised the FRG then that it was our intention to oppose GDR participation and we could not foresee any situation in which we would fail to interpose objection. Unless the FRG has other views, our present thinking with respect to an NPT amendments clause is along the same lines. The same position would, of course, apply to para. 3 of Article IV calling for a review conference."

The answer to the second part also is NO. In instructing its delegates to the Seventh International Conference of American States in Montevideo in 1933 the Department stated:

"It is well established . . . both in theory and in practice, that participation in an international conference does not affect the status of recognition or nonrecognition of a participating government." (2 Whiteman 546 (1963)).

When Communist China and North Korea attended the conference held in Geneva on reaching a peaceful settlement in Korea, the US again made it clear that invitation to attend a conference did not in any way imply recognition (2 Whiteman at 547-50) (1963)). The conference was held in accordance with an

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- 6 -

agreement of the Foreign Ministers of the US, UK, France, and the Soviet Union in Berlin to call such a conference. As he left for the conference in Geneva, Secretary Dulles stated:

"The conference does not imply our diplomatic recognition of Communist China. On the contrary, the Berlin agreement expressly stipulated that neither the invitation to nor the holding of the conference should imply diplomatic recognition where it is not already accorded. This proviso on which the United States stood absolutely firm was accepted reluctantly by the Soviet Union during the closing minutes of the Berlin conference."
(id. at 549).

Similarly the US has held 132 meetings with the Communist Chinese in Warsaw, as well as in other East European capitals, none of which has amounted to recognition (id. 551-554).

When various regimes that the US did not recognize attended the International Red Cross Conference in October-November 1955 the US delegate stated that the conference "was organized on a truly unique, humanitarian, universal, and nonpolitical basis" and did not imply a change in the policy of the United States with respect to such regimes. (37 Dep't State Bull. 904 (1957)).

There is thus ample precedent for the statement that
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not objecting/an unrecognized regime attending a conference does not in any way amount to or lead towards recognition of that regime.

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- 7 -

5. Assume that the treaty obligates non-nuclear weapon states to undertake to accept IAEA safeguards. How would the US reply to a request by the GDR that it is ready to have IAEA safeguards on its nuclear facilities, and also wishes to become a member of IAEA?

This question has three parts: a) How do these obligations affect the GDR? b) Can IAEA inspections be conducted in the GDR without membership being granted? c) How will the U.S. respond to a request by the GDR for membership?

a) As explained below, the US will probably take the position that the GDR has assumed obligations under the treaty. These obligations would include those of undertaking to accept IAEA safeguards. The question of GDR obligations under a treaty arose during the discussions surrounding the Test Ban Treaty.

In the hearings held in conjunction with that treaty, Secretary Rusk stated that although we are under no obligation to accept the notification of GDR subscription to the treaty "the East German regime would have committed itself to abide by the provisions of the treaty." (Hearings, at 18).

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- 8 -

In a Note rejecting the notice from the Soviet Union of the GDR signature to the Test Ban Treaty the US stated:

"Bearing in mind, however, the purposes of the treaty, the Government of the United States of America notes that the East German regime has signified its intention with respect to the matters dealt with in the treaty." (Note of August 16, 1963).

When asked during the test ban hearings whether we could object to a nuclear test by an entity that we did not recognize, Secretary Rusk replied:

"If they (the unrecognized entity) had signed the treaty and undertook what we would consider to be unilateral obligations with respect to this subject, this might well be considered by us as a violation." (Hearings, at 34).

The US has asserted that treaty obligations exist for regimes or entities that are not recognized by the US in other instances. The Geneva conventions on Prisoners of War, the obligations under the Charter of the UN (the US does not recognize the government of Albania, or the State of Outer Mongolia) are two examples.

In light of these examples, the US should not assert that the GDR has no obligations at all under the NPT. It is not necessary, however, to go beyond the kind of statements quoted above from Secretary Rusk, or to indicate to whom the obligations are owed.

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- 9 -

b) Secondly, does the GDR have to become a member of the IAEA in order to fulfill its obligations under the treaty? The answer to this is NO. There is no requirement in the NPT for membership in the IAEA, there is only the undertaking that IAEA safeguards will be applied.

It is possible for the IAEA to inspect a non-member. Article XII of the Agency statute states that it can apply safeguards

"With respect to any Agency project or other arrangements where the Agency is requested by other parties concerned to apply safeguards. . ."

That article further empowers the Agency

" "To send into the territory of the recipient State or States inspectors, designated by the Agency after consultation with the State or States concerned."

Although the IAEA has ^{never} conducted inspections on the territory of a non-member, the Statute would empower it to do so. It is not common for an international organization to conduct activities on the territory of a non-member, but it has been done. The UN for example has its European headquarters in Geneva, Switzerland, although Switzerland is not a member of the UN.

The US has often stated that it considers the GDR to be no more than the Soviet Zone of Germany. The US maintains that the GDR is not a sovereign state as that term is defined in international law. The GDR is recognized by fewer than a dozen states, and all of those are bloc countries. The Governments of the United Kingdom and France share the views of the United States as do the huge majority of the nations of the world and believe that only the Government of the FRG is entitled to speak on behalf of Germany as the representative of the German people in international affairs. The GDR is not a member of the United Nations or of any of the specialized agencies. Membership in the IAEA is open to states that are members of the UN.

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- 11 -

members of the UN or other specialized agencies and to other states "which deposit an instrument of acceptance of this statute after their membership has been approved by the General Conference upon the recommendation of the Board of Governors". (Art. 4.)

Under the standard that the US has applied, the GDR, is not considered a sovereign state, and therefore ineligible for membership in the IAEA.

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